JUNE 2, 1997

A BILL

To promote competition and consumer choice, remove outmoded barriers to affiliations between depository institutions and other financial services companies, protect the Federal deposit insurance funds, **[ADD FOR ALTERNATIVE A: *provide for the orderly conversion of savings associations to bank charters,*]** and for other purposes.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.--This Act may be cited as the "Financial Services Competition Act of 1997".

(b) TABLE OF CONTENTS.--The table of contents for this Act is as follows:

TITLE I--POWERS AND AFFILIATIONS OF INSURED DEPOSITORY INSTITUTIONS

Subtitle A--Removing Barriers to Affiliations Between Insured Depository Institutions and Other Financial Institutions

SEC. 101. ANTI-AFFILIATION PROVISIONS OF GLASS-STEAGALL ACT REPEALED.

(a) SECTION 20 REPEALED.--Section 20 of the Banking Act of 1933 (12 U.S.C. 377) is repealed.

(b) SECTION 32 REPEALED.--Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is repealed.

SEC. 102. ACTIVITY RESTRICTIONS OF BANK HOLDING COMPANY ACT REPEALED.

(a) IN GENERAL.--Subsections (a) through (c), (e), and (g) through (j) of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) are repealed.

(b) CONFORMING AMENDMENT TO THE BANK HOLDING COMPANY ACT TO REFLECT EXPANSION OF INSURANCE AUTHORITY.--Section 3(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)) is repealed, and subsection (g) is redesignated as subsection (f).

(c) CONFORMING CHANGES TO OTHER STATUTES.--

(1) AMENDMENTS TO THE FEDERAL RESERVE ACT TO PRESERVE EXEMPTION FROM SECTION 23A.--Section 23A(d)(5) of the Federal Reserve Act (12 U.S.C.

371c(d)(5)) is amended by striking “of the kinds described in section 4(c)(1) of the Bank Holding Company Act of 1956" and inserting “engaged or to be engaged solely in one or more of the following activities--

“(A) holding or operating properties used wholly or substantially by any bank subsidiary of a bank holding company in the operations of such bank subsidiary or acquired for such future use;

“(B) conducting a safe deposit business;

“(C) furnishing services to or performing services for a bank holding company or its bank subsidiaries; or

“(D) liquidating assets acquired from a bank holding company or its bank subsidiaries.”.

(2) AMENDMENTS TO THE EXPORT TRADING COMPANY ACT OF 1982.-- Section 206 of the Export Trading Company Act of 1982 (12 U.S.C. 635a-4) is amended--

(A) by striking “as defined in section 4(c)(14)(F)(i) of this title”; and

(B) by inserting at the end of the section the following: “For purposes of this section, the term 'export trading company' means a company that does business under the laws of the United States or any State, that is exclusively engaged in activities related to international trade, and that is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by

unaffiliated persons by providing one or more export trade services. For purposes of this section, the term 'export trade services' includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade and data processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States.".

(3) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT TO PRESERVE DEFINITION OF COMMONLY-CONTROLLED.-- Section 5(e)(9)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)(9)(A)) is amended by striking "section 4(f)(6)" and inserting "section 6(g)(6)".

(4) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.-- Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking "to engage directly or indirectly in a nonbanking activity pursuant to section 4 of the Bank Holding Company Act of 1956,".

(5) AMENDMENT TO THE BANK SERVICE CORPORATION ACT.-- Section 4(f) of the Bank Service Corporation Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: "(as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997).".

(6) AMENDMENT TO THE INTERNATIONAL BANKING ACT OF 1978.-- Section 8(d) of the International Banking Act of 1978 (12 U.S.C. 3106(d)) is amended by striking "and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1), (2), (3), and (4))".

(7) AMENDMENTS TO THE FINANCIAL PRIVACY ACT OF 1978.--Section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6)) is amended--

(A) by inserting "and" after the semicolon at the end of the subparagraph (A);

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B).

(8) CONFORMING AMENDMENT TO THE CLAYTON ACT.--Section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is repealed.

SEC. 103. QUALIFYING BANK HOLDING COMPANIES.

(a) QUALIFYING BANK HOLDING COMPANIES.--The Bank Holding Company Act of 1956 is amended by inserting after section 5 (12 U.S.C. 1844) the following new section:

"QUALIFYING BANK HOLDING COMPANIES

"SEC. 6. (a) DEFINITIONS.--For purposes of this section, the following definitions shall apply:

"(1) QUALIFYING BANK HOLDING COMPANY--

"(A) IN GENERAL.--The term 'qualifying bank holding company' means any bank holding company--

"(i) all of the subsidiary insured depository institutions of which are well capitalized;

"(ii) all of the subsidiary insured depository institutions of which are well managed (as defined in section 5136B(a)(2)(C) of the Revised Statutes or in section 24(d)(2)(B) of the Federal Deposit Insurance Act);

"(iii) that has entered into a written undertaking that complies with section 5(g) of this Act;

"(iv) that is deemed under paragraph (2) to be engaged in activities that are financial in nature; and

"(v) that has filed with the Board a declaration that it is a qualifying bank holding company.

[ADD FOR ALTERNATIVE A: "(B) LIMITATION ON BANK HOLDING COMPANY AFFILIATIONS.--A bank holding company may not become affiliated with any company that--

"(i) is not deemed to be engaged in activities that are financial in nature; and

"(ii) has consolidated assets of more than $750 million.

***No company that is, or is affiliated with, such a company may become a bank holding company.*]**

"(2) ACTIVITIES FINANCIAL IN NATURE.--A company shall be deemed to be engaged in activities that are financial in nature if **[ALTERNATIVE A:** ***not less than __ percent*****] OR [ALTERNATIVE B: <u>all</u>]** of its gross revenues from activities conducted in the United States are derived from 1 or more of the following:

"(A) financial institutions controlled by such company; or

"(B) financial activities in which such company or any of its subsidiaries engages.

"(3) FINANCIAL INSTITUTION.--The term 'financial institution' means any 1 or more of the following:

"(A) an insured depository institution;

"(B) a wholesale financial institution (as defined in section 171 of the Financial Services Competition Act of 1997);

"(C) a subsidiary of an insured depository institution;

"(D) a broker or dealer (as defined in section 3 of the Securities Exchange Act of 1934);

"(E) a futures commission merchant (as defined in section 1 of the Commodity Exchange Act);

"(F) an investment company (as defined in section 3 of the Investment Company Act of 1940);

"(G) an investment adviser (as defined in section 202(a)(11) of the Investment Advisers Act of 1940);

"(H) an insurance company organized or licensed under the law of any State (including a company that only incurs liabilities under annuity contracts the income on which is deferred under section 72 of the Internal Revenue Code of 1986); and

"(I) any other type of financial services company that the National Council on Financial Services has, by regulation, defined as a financial institution.

"(4) FINANCIAL ACTIVITY.--The term 'financial activity' means any 1 or more of the following:

"(A) receiving money subject to a deposit or other repayment obligation;

"(B) lending, exchanging, transferring, investing, or safeguarding money or other financial assets;

"(C) providing any device or other instrumentality for transferring money or other financial assets;

"(D) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, and acting as principal, agent, or broker for purposes of the foregoing;

"(E) providing financial, investment, or economic advisory or information services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940);

"(F) issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly;

"(G) directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than depository institutions or subsidiaries of depository institutions, that the bank holding company controls), or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity if--

"(i) the shares, assets, or ownership interests are not acquired or held directly by a depository institution;

"(ii) such shares, assets, or ownership interests are acquired and held as part of a bona fide underwriting, investment banking, or insurance company investment activity (including investment

activities engaged in for the purpose of appreciation and ultimate sale or other disposition of the investment);

"(iii) such shares, assets, or ownership interests are held for such a period as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively manage or operate the company or entity, except insofar as necessary to achieve the objectives of clause (ii);

"(H) arranging, effecting, or facilitating financial transactions for the account of third parties;

"(I) underwriting, dealing in, or making a market in securities;

"(J) engaging in any activity that was, by regulation or order, permissible for a bank holding company pursuant to section 4(c)(8) of this Act, as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997;

"(K) engaging, in the United States, in any activity that--

"(i) a bank holding company may engage in outside the United States; and

"(ii) the Board determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad;

"(L) owning shares of any company to the extent permissible under paragraph (6) or (7) of section 4(c) of this Act, as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997;

"(M) engaging in the functional equivalent of any activity described in 1 or more of subparagraphs (A) through (L); and

"(N) engaging in any activity that the National Council on Financial Services determines by regulation or order to be financial, or related to a financial activity, having taken into account--

"(i) changes or reasonably expected changes in the market in which bank holding companies compete;

"(ii) changes or reasonably expected changes in the technology for delivering financial services; and

"(iii) whether such activity is necessary or appropriate to allow a bank holding company and its affiliates to--

"(I) compete effectively with any company seeking to provide financial services in the United States;

"(II) use any available or emerging technological means to provide financial services; and

"(III) offer customers any available or emerging technological means for using financial services.

"(5) WELL CAPITALIZED.--The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act. For purposes of this section, the appropriate Federal banking agency shall have exclusive jurisdiction to determine whether an insured depository institution is well capitalized.

"(b) ACTIVITIES OF QUALIFYING BANK HOLDING COMPANIES.--A qualifying bank holding company may engage, directly or through a subsidiary that is not an insured depository institution (or a subsidiary thereof), in any activity to the extent permissible under the Financial Services Competition Act of 1997 without approval from or notice to the Board.

"(c) RESTRICTIONS APPLICABLE TO NON-QUALIFYING BANK HOLDING COMPANIES.--

"(1) IN GENERAL.--A bank holding company that is not a qualifying bank holding company may not engage, directly or indirectly through a subsidiary that is not an insured depository institution (or a subsidiary thereof), in any activity that is not permissible for a national bank to engage in directly.

"(2) DETERMINATIONS CONCERNING NATIONAL BANK ACTIVITIES.--Whenever this Act requires or permits a determination regarding the permissibility or impermissiblity of activities for a national bank, the Office of the Comptroller of the Currency shall have exclusive jurisdiction to make such a determination.

"(3) PROVISIONS APPLICABLE TO COMPANIES THAT DO NOT MEET CERTAIN REQUIREMENTS.--

"(A) IN GENERAL.--If the Board finds that a company described in paragraph (1) is engaged in any activity that is not permissible for a national bank to engage in directly, that company, after notice to such company and opportunity for comment, shall--

"(i) execute within 45 days of receipt of notice an agreement with the Board to become a qualifying bank holding company within a reasonable time period, as determined by the Board; or

"(ii) within 180 days, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, either--

"(I) divest control of any subsidiary insured depository institutions; or

"(II) cease to engage in any activity conducted by such company or its subsidiaries (other than an insured depository

institution or subsidiary thereof) that is not an activity that is permissible for a national bank to engage in directly.

"(B) FAILURE TO MEET CAPITAL REQUIREMENTS.--Notwithstanding subparagraph (A), a bank holding company that is no longer a qualifying bank holding company because any subsidiary insured depository institution of such company is less than well capitalized shall be subject to section 5(g) of this Act.

"(d) SAFEGUARDS FOR BANK SUBSIDIARIES.--Every qualifying bank holding company that engages directly or through a subsidiary (other than an insured depository institution or a subsidiary thereof) in any activity that is not permissible for a national bank to engage in directly, shall assure that--

"(1) its procedures for identifying and managing financial and operational risks within the company and its subsidiaries that are not insured depository institutions (or subsidiaries thereof) adequately protect the company's subsidiary insured depository institutions from such risks;

"(2) it has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and its subsidiaries, for the protection of the company's subsidiary insured depository institutions; and

"(3) it complies with this section.

[ADD FOR ALTERNATIVE A: *"(e) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.--A subsidiary insured depository institution of a bank holding company*

may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate unless the affiliate is engaged in activities that are financial in nature (as defined in subsection (a)(2)).”.]

(b) TRANSFER OF EXISTING GRANDFATHER PROVISIONS FROM SECTION 4.--

(1) Section 4(d) of the Bank Holding Company Act of 1956 is redesignated as subsection (f) of section 6 of the Bank Holding Company Act of 1956.

(2) Section 4(f) of the Bank Holding Company Act of 1956 is redesignated as subsection (g) of section 6 of the Bank Holding Company Act of 1956.

SEC. 104. CERTAIN STATE LAWS PREEMPTED.

No State may by law, regulation, order, interpretation, or otherwise, prevent or restrict an insured depository institution or a wholesale financial institution (as defined by section 171 of this Act) from being affiliated with an entity (including an entity engaged in insurance activities) as authorized by this Act or any other provision of law, or from engaging, directly or indirectly or in conjunction with such affiliate, in any activity (including insurance activity) authorized under this Act or any other provision of law. Nothing in this section shall be construed to prohibit a State regulator (after giving notice to the appropriate Federal banking agency to the extent practicable) from exercising, with respect to an affiliate of an insured depository institution, such authority as it may have under State law relating to the rehabilitation, conservatorship, receivership, or liquidation of the affiliate.

[ADD FOR ALTERNATIVE A: ***SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.--Section 3(f)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)(2)) (as redesignated by this section 102(b) of this Act) is amended to read as follows:***

"(2) A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company."**.]**

Subtitle B--Additional Safeguards

SEC. 121. WRITTEN UNDERTAKINGS BY QUALIFYING BANK HOLDING COMPANIES.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following new subsection:

"(g) WRITTEN UNDERTAKING REQUIRED FOR QUALIFYING BANK HOLDING COMPANY STATUS.--

"(1) IN GENERAL.--In order to be a qualifying bank holding company, a company shall provide to the Board an acceptable written undertaking that it will--

"(A) maintain the capital level of each subsidiary insured depository institution of such company at a level not less than that required for such institution to be well capitalized; or

"(B) within 180 days (or such additional period as the Board may permit) after the capital level of a subsidiary insured depository institution falls below the level required for such institution to be well capitalized, divest control of such institution under circumstances such that the institution will, immediately following such divestiture, be well capitalized.

"(2) ACCEPTABLE WRITTEN UNDERTAKING DEFINED.--For purposes of this subsection, the term 'acceptable written undertaking' means an undertaking--

"(A) that is in a form prescribed by the Board; and

"(B) the terms of which the Board finds provide adequate assurance of the ability of the holding company to perform the undertaking.

"(3) TIME LIMIT FOR ACCEPTANCE OF UNDERTAKING.--If the Board has not notified a company of any objection within 60 days of the time the undertaking is submitted to the Board, the undertaking shall be deemed an acceptable written undertaking.

"(4) ENFORCEABILITY OF UNDERTAKING.--

"(A) IN GENERAL.--An undertaking entered into pursuant to this subsection shall be enforceable against the holding company by the Board under--

"(i) this subsection;

"(ii) section 8 of this Act; and

"(iii) section 8 of the Federal Deposit Insurance Act to the extent applicable to bank holding companies.

"(B) ENFORCEABILITY BY RECEIVER.--

"(i) IN GENERAL.--An undertaking entered into pursuant to this subsection shall be enforceable by a receiver of an insured depository institution.

"(ii) MEASURE OF LIABILITY.--In any such receivership, the bank holding company shall be liable for the lesser of--

"(I) an amount equal to 5 percent of the institution's total assets at the time the institution ceased to be well capitalized; or

"(II) an amount equal to the loss that the Federal Deposit Insurance Corporation would have incurred with respect to the institution but for the liability of the bank holding company pursuant to the undertaking.

"(C) EMERGENCY ACTION.--

"(i) IN GENERAL.--In addition to the authority described in subparagraph (A), the Board shall, upon a determination that emergency action is required to ensure performance of the undertaking, have the authority to issue a temporary order requiring the bank holding company that entered into the undertaking to--

"(I) take affirmative action to perform the undertaking; and

"(II) cease and desist from any action that would impair the ability of the bank holding company to perform the undertaking.

"(ii) DURATION OF THE TEMPORARY ORDER.--An order issued under this subparagraph shall become effective upon service on the bank holding company and, unless set aside, limited, or suspended by a court in accordance with section 8(c)(2) of the Federal Deposit Insurance Act, shall remain effective and enforceable pending any action resulting from any proceedings initiated under subparagraph (A).

"(D) ADDITIONAL REMEDIES.--In addition to such other remedies as it may have or elect to use in the event of the failure of a bank holding company to perform an undertaking entered into pursuant to this subsection, the Board may require the bank holding company, under procedures prescribed by the Board, to cease to engage in any activity that is not permissible for a national bank to engage in directly.".

SEC. 122. CONSUMER PROTECTION.

(a) PURPOSES.--The purposes of this section are to avoid the following in connection with retail sales of nondeposit investment products:

(1) customer confusion about the applicability and scope of insurance by the Federal Deposit Insurance Corporation;

(2) customer confusion about the applicability and scope of insurance by the Securities Investor Protection Corporation;

(3) improper disclosure of confidential customer information; and

(4) conflicts of interest and other abuses.

(b) SAFEGUARDS APPLICABLE TO RETAIL SALES OF NONDEPOSIT INVESTMENT PRODUCTS BY INSURED DEPOSITORY INSTITUTIONS NOT REGISTERED AS BROKERS.--

(1) IN GENERAL.--The appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission, shall carry out the purposes of this section by jointly prescribing regulations governing the retail sale of nondeposit investment products by insured depository institutions that are not registered as brokers under the Securities Exchange Act of 1934.

(2) SCOPE OF REGULATIONS.--Regulations prescribed under paragraph (1) shall, at a minimum, deal with the following:

(A) advertising;

(B) disclosure;

(C) sales practices;

(D) qualifications and training of sales personnel, including training in ascertaining the appropriateness of a particular investment product for a prospective customer;

(E) any compensation of sales personnel that is based on transactions or referrals; and

(F) the circumstances under which transactions and referrals occur.

(3) COMPARABILITY REQUIREMENT.--Insofar as regulations prescribed under paragraph (1) apply to transactions in securities (including securities issued by an investment company) or annuities, those regulations shall be comparable to the standards applicable to brokers and dealers registered under the Securities Exchange Act of 1934, except to the extent that the National Council on Financial Services (established by section 131) determines that comparable standards are not necessary or appropriate to carry out the purposes of this section.

(c) SAFEGUARDS APPLICABLE TO BROKERS AND DEALERS THAT ARE, OR ARE AFFILIATED WITH, INSURED DEPOSITORY INSTITUTIONS.--

(1) IN GENERAL.--The Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall carry out the purposes of this section by prescribing rules regarding sales of securities by--

(A) any insured depository institution registered as a broker or dealer under the Securities Exchange Act of 1934; or

(B) any registered broker or dealer that is a subsidiary or affiliate of an insured depository institution.

(2) SCOPE OF REGULATIONS.--Regulations prescribed under paragraph (1) shall, at a minimum, establish requirements with respect to--

(A) disclosures of information concerning coverage under the Securities Investor Protection Act of 1970; and

(B) disclosures of the financial interest of the depository institution or any securities subsidiary or securities affiliate with respect to referrals or transactions.

(d) MAKING DISCLOSURE READILY UNDERSTANDABLE.--

(1) WRITTEN DISCLOSURE.--Regulations prescribed under subsection (b) or (c) shall encourage the use of disclosure that is simple, direct, and readily understandable, such as the following:

"NOT FDIC-INSURED OR SIPC-INSURED."

"NOT GUARANTEED BY THE BANK."

"MAY GO DOWN IN VALUE."

(2) ORAL DISCLOSURE.--Regulations prescribed under subsection (b) or (c) shall encourage the use of oral disclosure as a supplement to written disclosure.

(e) AUTHORITY OF NATIONAL COUNCIL ON FINANCIAL SERVICES.--To carry out the purposes of this section, the National Council on Financial Services may--

(1) prescribe regulations under subsection (b) that are more stringent than those prescribed by the appropriate Federal banking agencies; and

(2) prescribe regulations under subsection (c) that are more stringent than those prescribed by the Securities and Exchange Commission.

(f) DISCLOSURE OF CUSTOMER INFORMATION.--No insured depository institution shall disclose to any affiliate or subsidiary of that institution that is not an insured depository institution, and no affiliate of that company that is not an insured depository institution shall disclose to any other affiliate that is an insured depository institution or a subsidiary thereof, any nonpublic customer information (including an evaluation of creditworthiness), unless the customer --

(1) has received clear and conspicuous disclosure that such information may be communicated among such persons; and

(2) has had an opportunity, before such information is initially communicated, to direct that such information not be communicated among such persons.

(g) BIENNIAL REVIEW OF REGULATIONS.--Beginning on June 30, 2001, the National Council on Financial Services shall biennially review the regulations prescribed under this section to determine whether they adequately carry out the purposes of this section.

(h) DEFINITIONS.--For purposes of this section, the terms “appropriate Federal banking agency” and “insured depository institution” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

Subtitle C--National Council on Financial Services

SEC. 131. ESTABLISHMENT AND OPERATION OF THE COUNCIL.

(a) ESTABLISHMENT AND PURPOSES.--As of the date of enactment of this Act, there is established a National Council on Financial Services (hereinafter "the Council"), which, among other functions specified in this Act, shall seek generally to improve the efficiency and competitiveness of the U.S. financial services system by increasing coordination among regulators of financial services providers and monitoring innovations in the delivery of financial services for the benefit of the U.S. economy and consumers.

(b) MEMBERSHIP.--The Council shall consist of the following members:

(1) The Secretary of the Treasury.

(2) The Chairman of the Board of Governors of the Federal Reserve System.

(3) The Chairperson of the Federal Deposit Insurance Corporation.

(4) The Comptroller of the Currency and the Director of the Office of Thrift Supervision.

(5) The Chairman of the Securities and Exchange Commission.

(6) The Chairman of the Commodity Futures Trading Commission.

(7) An individual with current or prior experience in state insurance regulation who shall be appointed by the President, with the advice and consent of the Senate, for a term of 3 years.

(c) CHAIRPERSON.--The Secretary of the Treasury shall be the Chairperson of the Council.

(d) VICE CHAIRPERSON.--The Chairman of the Board of Governors of the Federal Reserve System shall be the Vice-Chairperson of the Council.

(e) COMPENSATION.--

(1) AGENCY MEMBERS.--Each member of the Council specified in paragraphs (1) through (6) of subsection (b) (hereinafter “agency members”) shall serve without additional compensation.

(2) INDIVIDUAL MEMBER.--The member of the Council described in subsection (b)(7) shall serve without compensation, but shall be entitled, per diem, to reasonable expenses directly related to duties carried out as a member of the Council.

(f) EXPENSES OF THE COUNCIL.--

(1) The agency of each agency member of the Council shall be responsible for expenses associated with the agency member's participation in the functions of the Council.

(2) Any other expenses of the Council, including expenses described in subsection (e)(2), shall be shared pro rata among the agencies of the agency members.

(g) ACTION BY THE COUNCIL.--

(1) QUORUM.--A majority of the members of the Council shall constitute a quorum.

(2) FINAL ACTION BY THE COUNCIL.--On matters determined by the Council to require an affirmative vote to constitute final action by the Council, such vote shall require a majority of a quorum of Council members.

(3) Members of the Council shall not vote through any designee.

SEC. 132. FUNCTIONS OF THE COUNCIL

(a) IN GENERAL.--In addition to the authority conferred on the Council by other provisions of this Act, the Council shall have the authority specified in this section.

(b) AUTHORITY TO ISSUE REGULATIONS.--

(1) CALCULATION OF GROSS REVENUES TEST.--The Council shall **[ALTERNATIVE A:** ***within 1 year of the date of enactment of this Act issue proposed regulations, and within 8 months thereafter*****] OR [ALTERNATIVE B: within 9 months of the date of enactment of this Act]** issue final regulations prescribing the method for calculating compliance with the gross revenues test for purposes of section 6(a)(2) of the Bank Holding Company Act of 1956.

(2) DEFINITION OF FINANCIAL INSTITUTION.--The Council may by regulation define types of financial services companies as financial institutions, for purposes of section 6(a)(3) of the Bank Holding Company Act of 1956.

(3) DEFINITION OF FINANCIAL ACTIVITY AND ACTIVITY RELATED TO A FINANCIAL ACTIVITY.--The Council may issue regulations or orders finding whether an activity is financial or related to a financial activity, for purposes of section 6(a)(4) of the Bank Holding Company Act of 1956 or section 5136B of the Revised Statutes.

(4) ADDITIONAL SAFEGUARDS.--The Council may, by regulation or order, impose restrictions or requirements on relationships or transactions involving an insured depository institution and its affiliates and subsidiaries engaged in any activity that is not permissible for a national bank to engage in directly, if the Council finds that such restrictions or requirements will promote safety and soundness in the financial services system.

(5) BANKING PRODUCTS.--The Council shall issue a determination, by regulation or order, with respect to whether an activity should be designated a banking product as defined in section 18(s) of the Federal Deposit Insurance Act (as added by section 207 of this Act), when the appropriate Federal banking agency and the Securities and Exchange Commission have not issued a joint determination upon expiration of the period for consideration of an activity pursuant to that section. The Council shall adopt rules of procedure that provide for the expeditious consideration and issuance of determinations under this paragraph.

(c) ENFORCEMENT OF COUNCIL ACTIONS.--Actions taken by the Council shall be binding on the agencies represented on the Council and enforced by the agency responsible for supervising an entity to which an action of the Council applies.

Subtitle D--Bank Holding Company Supervision

SEC. 141. STREAMLINING BANK HOLDING COMPANY SUPERVISION.

Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

"(c) REPORTS AND EXAMINATIONS.--

"(1) REPORTS.--

"(A) IN GENERAL.--The Board from time to time may require any bank holding company to submit reports, under oath or otherwise, to enable the Board to determine compliance with the provisions of this Act and regulations and orders issued thereunder.

"(B) USE OF EXISTING REPORTS.--

"(i) IN GENERAL.--The Board shall not require any report pursuant to subparagraph (A) if information sufficient for the Board to make the determinations required under subparagraph (A) is reasonably available from any other source.

"(ii) USE AND AVAILABILITY.--The Board shall, as far as possible, use the report of examinations or comparable reports prepared by any Federal or State regulatory agency, or any self-regulatory organization for purposes of subparagraph (A), and such agencies or organizations shall make such information available to the Board.

"(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.--

"(i) The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide, from this paragraph and any regulations prescribed thereunder.

"(ii) CRITERIA FOR EXEMPTION.--In granting an exemption under clause (i), the Board shall consider, among other factors--

"(I) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978), the Commodity Futures Trading Commission, or a foreign regulatory body of a similar type;

"(II) the primary business of the company;

"(III) the nature and extent of domestic or foreign regulation of the company's activities; and

"(IV) the absolute and relative size within the company of the subsidiary insured depository institutions of the company.

"(2) EXAMINATIONS.--

"(A) EXAMINATION AUTHORITY.--The Board may make examinations of each bank holding company and each subsidiary thereof, the cost of

which shall be assessed against, and made payable by such holding company.

"(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND NONBANK SUBSIDIARIES.--The Board may make examinations of each bank holding company and each nonbank subsidiary (other than a subsidiary of an insured depository institution) in order to--

"(i) inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

"(ii) inform the Board of--

"(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary insured depository institution of such holding company; and

"(II) the systems of the holding company; and

"(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary insured depository institution and such subsidiaries.

"(C) RESTRICTED FOCUS OF EXAMINATIONS.--The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to--

"(i) the bank holding company; and

"(ii) any nonbank subsidiary of the holding company (other than a subsidiary of an insured depository institution) that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any subsidiary insured depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any insured depository institution affiliate of the holding company.

"(D) DEFERENCE TO BANK EXAMINATIONS.--The Board shall, to the fullest extent possible, use for the purposes of this section the reports of examinations of insured depository institutions made by the appropriate Federal and State depository institution supervisory authority.

"(E) DEFERENCE TO OTHER EXAMINATIONS.--The Board shall, to the fullest extent possible, use the reports of examination made of--

"(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

"(ii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

"(iii) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

"(3) NOTICE TO BANKING AGENCIES OF FINANCIAL AND OPERATIONAL CONCERNS.--Any agency represented on the National Council on Financial Services or any State supervisory authority shall notify the Board and the appropriate Federal banking agency or State bank supervisor of significant financial or operational risks to any depository institution resulting from the activities of any affiliate of a depository institution.".

SEC. 142. ADMINISTRATION OF THE BANK HOLDING COMPANY ACT OF 1956.

(a) PREVENTION OF DUPLICATIVE FILINGS.--Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding the following new sentence at the end: "A declaration filed pursuant to section 6(a)(1)(E) shall satisfy the requirements of this subsection.".

(b) DIVESTITURE PROCEDURES.--Section 5(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(e)) is amended--

(1) by adding "at the election of the bank holding company--(A)" after "Financial Institutions Supervisory Act of 1966,"; and

(2) by inserting after "shareholders arising out of such a distribution" the following: "; or (B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in

the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) its ownership or control of any such bank" after "shareholders arising out of such a distribution".

SEC. 143. BANK HOLDING COMPANY CAPITAL.

Section 5 of the Bank Holding Company Act (12 U.S.C. 1844) is amended by adding at the end the following new subsection:

"(h) CAPITAL GUIDELINES.--

"(1) IN GENERAL.--The Board may adopt consolidated capital adequacy guidelines for bank holding companies, and apply such guidelines to a bank holding company if--

"(A) the bank holding company has consolidated assets exceeding $75 billion and controls 1 or more insured depository institutions, the aggregate total assets of which exceed $5 billion;

"(B) the aggregate total assets of all subsidiary insured depository institutions of the bank holding company equal 75 percent or more of the consolidated assets of the bank holding company; or

"(C) any subsidiary insured depository institution of the bank holding company is and has been for more than 90 days less than well capitalized (as defined in section 6(a)(5)) and such bank holding company is engaged in activities that are not permissible for a national bank to engage in directly.

"(2) COMPANIES PRESUMPTIVELY NOT COVERED.--

"(A) Except as permitted under paragraph (1), the Board shall not apply any capital guideline or requirement to any bank holding company, by regulation, order, interpretation, condition, or otherwise, unless the Board determines, after consultation with the appropriate Federal banking agency for a subsidiary insured depository institution, that the imposition of such guideline or requirement is or may be necessary to avert a material risk to the safety and soundness of such subsidiary insured depository institution of such company.

"(B) A determination under subparagraph (A) shall be based upon particular characteristics of the financial structure of such company or companies, or the existence of unusual risk factors in the business of such company or companies. Such a determination may be made with respect to an individual bank holding company or a class of bank holding companies.

"(3) METHODS OF CALCULATION.--

"(A) In calculating the total assets of insured depository institutions for purposes of paragraph (1)(B), the Board shall exclude the assets of any subsidiary of an insured depository institution (except subsidiaries organized under section 25A of the Federal Reserve Act or corporations chartered under State law to engage in activities similar to those permitted

by such section) if such subsidiary is engaged in activities not permissible for the insured depository institution to engage in directly.

"(B) In determining any appropriate capital guidelines for bank holding companies under paragraph (1), the Board shall--

"(i) with respect to components of such companies that are subject to capital requirements of federal or State regulatory authorities and that satisfy such capital requirements--

"(I) exclude from such companies' total assets an amount equal to the total assets of such components; and

"(II) exclude from such companies' capital an amount equal to the amount of capital required to satisfy such components' capital requirements; and

"(ii) with respect to components that are not subject to capital requirements of federal or state regulatory authorities, and that have capital levels consistent with industry norms or standards--

"(I) exclude from such companies' total assets an amount equal to the total assets of such components; and

"(II) exclude from such companies' capital an amount equal to the capital of such components.".

Subtitle E--Subsidiaries of Insured Depository Institutions

SEC. 151. SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.

(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.--Chapter one of title LXII of the Revised Statutes of United States (12 U.S.C. 21 *et seq*.) is amended by inserting after section 5136A the following new section:

"SEC 5136B. FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.

"(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.--

"(1) IN GENERAL.--Subject to the approval of the Comptroller of the Currency, a subsidiary of a national bank may engage in an activity that is not permissible for a national bank to engage in directly, but only if:

"(A) the activity is a financial activity; and

"(B) the national bank is well capitalized and well managed.

"(2) DEFINITIONS.--For purposes of this section, the following definitions shall apply:

"(A) FINANCIAL SUBSIDIARY.--The term 'financial subsidiary' means a subsidiary of a national bank that is engaged in a financial activity (as

defined in subparagraph (B)) that is not a permissible activity for a national bank to engage in directly.

"(B) FINANCIAL ACTIVITY.--The term 'financial activity' means any 1 or more of the following:

"(i) receiving money subject to a deposit or other repayment obligation;

"(ii) lending, exchanging, transferring, investing, or safeguarding money or other financial assets;

"(iii) providing any device or other instrumentality for transferring money or other financial assets;

"(iv) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death or acting as principal, agent, or broker for purposes of any of the foregoing;

"(v) providing financial, investment, or economic advisory or information services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940);

"(vi) issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly;

"(vii) directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities, or otherwise, shares, assets, or ownership interests (including without limitation debt or

equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity if--

"(I) the shares, assets, or ownership interests are not acquired or held directly by a depository institution;

"(II) such shares, assets, or ownership interests are acquired and held as part of a bona fide underwriting, investment banking, or insurance company investment activity (including investment activities engaged in for the purpose of appreciation and ultimate sale or other disposition of the investment);

"(III) such shares, assets or ownership interests are held for such a period as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in subclause (II); and

"(IV) during the period such shares, assets, or ownership interests are held, the subsidiary does not actively manage or operate the company or entity, except insofar as necessary to achieve the objectives of subclause (II);

"(viii) arranging, effecting, or facilitating financial transactions for the account of third parties;

"(ix) underwriting, dealing in, or making a market in securities;

"(x) engaging in any activity that was, by regulation or order, permissible for a bank holding company pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956, as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997;

"(xi) engaging, in the United States, in any activity, that--

"(I) a bank holding company may engage in outside the United States; and

"(II) the Board of Governors of the Federal Reserve System determined, under regulations issued pursuant to section 4(c)(13) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad;

"(xii) owning shares of any company to the extent permissible under section 4(c)(7) of the Bank Holding Company Act of 1956, as

in effect on the day before the date of enactment of the Financial Services Competition Act of 1997;

"(xiii) engaging in the functional equivalent of any activity described in 1 or more of clauses (i) through (xii); and

"(xiv) engaging in any activity that the National Council on Financial Services determines by regulation or order to be financial, or related to a financial activity, having taken into account--

"(I) changes or reasonably expected changes in the market in which bank subsidiaries compete;

"(II) changes or reasonably expected changes in the technology for delivering financial services; and

"(III) whether such activity is necessary or appropriate to allow a bank and its subsidiaries to--

"(aa) compete effectively with any company seeking to provide financial services in the United States;

"(bb) use any available or emerging technological means to provide financial services; and

"(cc) offer customers any available or emerging technological means for using financial services.

"(C) WELL CAPITALIZED.--The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act, and the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.

"(D) WELL MANAGED.--The term 'well managed' means--

"(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller, the achievement in connection with the most recent examination or subsequent review of the bank of--

"(I) a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system); and

"(II) at least a rating of 2 for management, if that rating is given; or

"(ii) in the case of a national bank that has not been examined, the existence and use of managerial resources that the Comptroller determines are satisfactory.

"(b) CAPITAL DEDUCTION REQUIRED.--

"(1) IN GENERAL.--For purposes of determining compliance with applicable capital standards--

"(A) the amount of a national bank's equity investment in a financial subsidiary shall be deducted from the national bank's assets and tangible equity capital; and

"(B) the financial subsidiary's assets and liabilities shall not be consolidated with those of the national bank.

"(2) REGULATIONS REQUIRED.--The Comptroller shall promulgate regulations implementing this subsection.

"(c) FEDERAL RESERVE ACT RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES APPLIED.--

"(1) IN GENERAL.--Sections 23A and 23B of the Federal Reserve Act shall apply to transactions between a national bank (including a subsidiary that is engaged exclusively in activities permissible for the national bank to engage in directly) and a financial subsidiary of the national bank in the same manner and to the same extent as if the financial subsidiary were an affiliate of the national bank.

"(2) EQUITY INVESTMENTS EXCLUDED.--Notwithstanding paragraph (1), section 23A(a)(1) of the Federal Reserve Act shall not apply to a national bank's equity investment in a financial subsidiary.

"(3) TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY AND ITS AFFILIATES.--

"(A) IN GENERAL.--A transaction between a financial subsidiary and an affiliate of the financial subsidiary shall not be deemed to be a

transaction between a subsidiary of a national bank and an affiliate of the bank for purposes of section 23A or section 23B of the Federal Reserve Act.

"(B) CERTAIN AFFILIATES EXCLUDED.--For purposes of subparagraph (A), an affiliate does not include a bank or a bank's subsidiary that is engaged exclusively in activities permissible for a national bank to engage in directly.

"(4) AFFILIATE DEFINED.--For purposes of this subsection, the term 'affiliate' has the same meaning as in section 23A of the Federal Reserve Act.

"(d) SAFEGUARDS FOR THE BANK.--A national bank that establishes or maintains a financial subsidiary shall assure that--

"(1) its procedures for identifying and managing financial and operational risks within the bank and its financial subsidiaries adequately protect the bank from such risks;

"(2) it has reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and its subsidiaries, for the protection of the bank; and

"(3) it complies with this section.

"(e) NATIONAL BANKS THAT DO NOT COMPLY WITH REQUIREMENTS.--

"(1) IN GENERAL.--If the Comptroller determines that a national bank that controls a financial subsidiary is not well capitalized or well managed, the

Comptroller shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

"(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.--

"(A) CONTENT OF AGREEMENT.--Within 45 days of the bank's receipt of a notice given under paragraph (1) (or such additional period as the Comptroller may permit), the bank shall execute an agreement with the Comptroller to correct the conditions described in the notice.

"(B) COMPTROLLER MAY IMPOSE LIMITATIONS.--Until the conditions giving rise to the notice are corrected, the Comptroller may impose such limitations on the conduct of the business of the bank or a subsidiary of the bank as the Comptroller deems appropriate under the circumstances.

"(3) FAILURE TO CORRECT.--If the conditions described in the notice are not corrected within 180 days after the bank receives the notice--

"(A) the bank shall divest control of each subsidiary engaged in an activity that is not permissible for the bank to engage in directly; or

"(B) each subsidiary of the bank shall cease any activity that is not permissible for the bank to engage in directly.".

(b) TECHNICAL AMENDMENT.--The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 *et seq*.) is amended by inserting after the item relating to section 5136A the following new item:

"5136B. Financial subsidiaries of national banks."

SEC. 152. ACTIVITIES OF SUBSIDIARIES OF INSURED STATE BANKS.

Section 24(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)) is amended to read as follows:

"(d) SUBSIDIARIES OF INSURED STATE BANKS.--

"(1) IN GENERAL.--A subsidiary of an insured State bank may not engage in any activity that is not permissible for a national bank to engage in directly unless--

"(A) the Corporation has determined that the activity poses no significant risk to the deposit insurance fund; and

"(B) the bank is well capitalized and well managed.

"(2) DEFINITIONS.--For purposes of this subsection, the following definitions shall apply:

"(A) WELL CAPITALIZED.--The term 'well capitalized' has the same meaning as in section 38, and the appropriate Federal banking agency shall have exclusive jurisdiction to determine whether an insured State bank is well capitalized.

"(B) WELL MANAGED.--The term 'well managed' means--

"(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Corporation, the achievement in connection with the most recent examination or subsequent review of the bank of--

"(I) a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or equivalent rating under an equivalent rating system); and

"(II) at least a rating of 2 for management, if that rating is given; or

"(ii) in the case of a insured State bank that has not been examined, the existence and use of managerial resources that the Corporation determines are satisfactory.

"(3) CAPITAL DEDUCTION REQUIRED.--

"(A) IN GENERAL.--For purposes of determining compliance with applicable capital standards--

"(i) the amount of a bank's equity investment in a subsidiary engaged in an activity that is not permissible for a national bank to engage in directly shall be deducted from the bank's assets and tangible equity capital; and

"(ii) the assets and liabilities of a subsidiary engaged in an activity that is not permissible for a national bank to engage in directly shall not be consolidated with those of the bank.

"(B) REGULATIONS REQUIRED.--The Corporation shall promulgate regulations implementing this subsection.

"(4) FEDERAL RESERVE ACT RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES APPLIED.--Sections 23A and 23B of the Federal Reserve Act shall apply to transactions between an insured State bank (including a subsidiary of the bank that is engaged exclusively in activities that are permissible for a national bank to engage in directly) and its subsidiary engaged in an activity that is not permissible for a national bank to engage in directly in the same manner and to the same extent as if the subsidiary were a financial subsidiary of a national bank (as defined in section 5136B(a)(2)(A) of the Revised Statutes of the United States).

"(5) SAFEGUARDS FOR THE BANK.--An insured State bank that establishes or maintains a subsidiary engaged in an activity that is not permissible for a national bank to engage in directly shall assure that--

"(A) its procedures for identifying and managing financial and operational risks within the bank and its subsidiaries adequately protect the bank from such risks;

"(B) it has reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and its subsidiaries, for the protection of the bank; and

"(C) it complies with this section.

"(6) INSURED STATE BANKS THAT DO NOT COMPLY WITH REQUIREMENTS.--

"(A) IN GENERAL.--If the Corporation determines that an insured State bank that controls a subsidiary engaged in an activity not permissible for a national bank to engage in directly is not well capitalized or well managed, the Corporation shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

"(B) AGREEMENT TO CORRECT CONDITIONS REQUIRED.--

"(i) CONTENT OF AGREEMENT.--Within 45 days of the bank's receipt of a notice given under subparagraph (A) (or such additional period as the Corporation may permit), the bank shall execute an agreement with the Corporation to correct the conditions described in the notice.

"(ii) CORPORATION MAY IMPOSE LIMITATIONS.--Until the conditions giving rise to the notice are corrected, the Corporation may impose such limitations on the conduct of the business of the bank or a subsidiary of the bank as the Corporation deems appropriate under the circumstances.

"(C) FAILURE TO CORRECT.--If the conditions described in the notice are not corrected within 180 days after the bank receives the notice--

"(i) the bank shall divest control of each subsidiary engaged in an activity that is not permissible for a national bank to engage in directly; or

"(ii) each subsidiary of the bank shall cease any activity that is not permissible for a national bank to engage in directly.".

SEC. 153. OBLIGATIONS OF SUBSIDIARIES AND AFFILIATES CANNOT BE EXTENDED TO INSURED DEPOSITORY INSTITUTIONS.

The Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) is amended by adding at the end the following new section:

"SEC. 45. OBLIGATIONS OF SUBSIDIARIES AND AFFILIATES CANNOT BE EXTENDED TO INSURED DEPOSITORY INSTITUTIONS.

"(a) IN GENERAL.--Notwithstanding any other law (including any law relating to insurance), no obligation of an affiliate or subsidiary of an insured depository institution arising more than 2 years after the date of enactment of the Financial Services Competition Act of 1997 may be charged against such insured depository institution by reason of any ruling, determination, or judgment disregarding the separate corporate identity or limited liability of the insured depository institution or the affiliate or subsidiary.

"(b) MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.--

"(1) IN GENERAL.--The appropriate Federal banking agency shall take steps, including conducting the review required by paragraph (2), to assure that each insured depository institution observes the separate corporate identity and separate legal status of each of the institution's subsidiaries and affiliates.

"(2) EXAMINATIONS.--Each appropriate Federal banking agency, when examining an insured depository institution, shall review whether the institution is observing the separate corporate identity and separate legal status of the institution's subsidiaries and affiliates.

"(c) MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY PROHIBITED.--

"(1) IN GENERAL.--No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured depository institution shall knowingly represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution unless the institution has expressly and lawfully assumed, or will expressly and lawfully assume, liability for the obligation.

"(2) CRIMINAL PENALTY.--Whoever violates paragraph (1) shall be fined not more than $100,000, imprisoned for not more than one year, or both.

"(3) INSTITUTION-AFFILIATED PARTY DEFINED.--For purposes of this subsection the term 'institution-affiliated party' with respect to a subsidiary or affiliate has the same meaning as in section 3 except that references to an insured

depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

"(d) RULE OF CONSTRUCTION.--This section shall not be construed as--

"(1) excusing an insured depository institution from--

"(A) any liability that it has expressly and lawfully assumed; or

"(B) any liability to which it would be otherwise subject for engaging or participating in any violation of law or any breach of contract;

"(2) limiting the authority of the Corporation under section 5(e);

"(3) permitting any obligation to be charged against an insured depository institution that would not otherwise be charged against the institution; or

"(4) prohibiting joint or cooperative marketing, information sharing, or the purchase or sale of services among affiliates.".

Subtitle F--Direct Activities of Banks

SEC. 161. POWERS OF NATIONAL BANKS.

(a) NATIONAL BANK INSURANCE ACTIVITIES.--The 11th undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 92) is amended to read as follows--

"**National Bank Insurance Activities**

"(A) In addition to the powers now vested by law in national banking associations organized under the laws of the United States (including those vested pursuant to the paragraph designated 'Seventh' of section 5136 of the Revised Statutes), any such association may, under such regulations or

orders as may be prescribed by the Comptroller of the Currency to implement this paragraph, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon by the said association and the insurance company for which it may act as agent: *Provided, however,* That no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further,* That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

"(B) Any insurance activity that a national bank conducts, directly or indirectly, under this paragraph or pursuant to any other Federal law shall be conducted in accordance with State laws generally applicable to all insurance providers in the State, including State laws prescribing licensing qualification requirements and standards for market conduct.

"(C) Notwithstanding subparagraph (B), national banks and subsidiaries thereof shall not be subject to any State law that--

"(i) has the purpose or effect of discriminating against, or has a disproportionately restrictive effect on, insured depository

institutions or other financial institutions (or affiliates or subsidiaries thereof) as compared with its effect on other providers of the same or similar products in that State; or

"(ii) prevents a national bank or subsidiary thereof from engaging in, directly or indirectly, or significantly interferes with or impairs the ability of a national bank or subsidiary thereof to engage in, any insurance activity authorized under this paragraph or any other Federal law.

The provisions of this subparagraph shall be in addition to the prohibitions in section 104 of the Financial Services Competition Act of 1997. Nothing in clause (ii) of this subparagraph shall prohibit a State insurance regulator (after giving written notice to the Comptroller to the extent practicable) from exercising, with respect to an insurance subsidiary of a national bank, such authority as it may have under State law relating to the rehabilitation, conservatorship, receivership, or liquidation of insurance companies.

"(D) The Comptroller shall consult with the National Council on Financial Services before making a determination

under subparagraph (C) that a State law does not apply to a national bank.

"(E) Except to the extent permissible by law in effect on the day before the date of enactment of the Financial Services Competition Act of 1997, a national banking association shall not directly engage in insurance underwriting.".

(b) AUTHORITY TO UNDERWRITE CERTAIN MUNICIPAL BONDS.--The paragraph designated "Seventh" of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: "In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions herein contained as to dealing in, underwriting, and purchasing investment securities for the association's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986)

issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).".

SEC. 162. STATE BANK INSURANCE ACTIVITIES.

Section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) is amended by adding at the end the following new subsection;

"(k) STATE LAWS APPLICABLE TO INSURANCE ACTIVITIES OF STATE BANKS.--State banks and subsidiaries thereof that conduct insurance activities shall not be subject to any State law that has the purpose or effect of discriminating against, or has a disproportionately restrictive effect on, insured depository institutions or other financial institutions (or affiliates or subsidiaries thereof) as compared with its effect on other providers of the same or similar products in that State.".

Subtitle G--Wholesale Financial Institutions

SEC. 171. WHOLESALE FINANCIAL INSTITUTIONS.

(a) DEFINITIONS.--

(1) BANK AND RELATED TERMS.--For purposes of this subtitle, the terms "bank", "insured depository institution", "State bank", and "noninsured bank" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) NATIONAL WHOLESALE FINANCIAL INSTITUTION.--The term "national wholesale financial institution" means a national bank that has received approval from the Comptroller of the Currency (hereinafter "the Comptroller") to operate as a national wholesale financial institution in accordance with the provisions of section 5136C of the Revised Statutes of the United States.

(3) STATE MEMBER WHOLESALE FINANCIAL INSTITUTION.--The term "state member wholesale financial institution" means a State bank that is has received approval from the Board of Governors of the Federal Reserve System (hereinafter "the Board") to operate as a state member wholesale financial institution.

(4) WHOLESALE FINANCIAL INSTITUTION.--The term "wholesale financial institution" means a bank--

(A) that--

(i) is a noninsured bank; or

(ii) in the case of an existing bank, has terminated its deposit insurance in accordance with section 8A of the Federal Deposit Insurance Act; and

(B) has received approval to operate as a wholesale financial institution from the Comptroller in accordance with the provisions of section 5136C of the Revised Statutes of the United States or from the Board under section 9B of the Federal Reserve Act.

(b) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS AUTHORIZED.--

(1) Chapter 1 of Title LXII of the Revised Statutes of the United States (12 U.S.C. 21 *et seq*.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

"(a) APPROVAL FROM THE COMPTROLLER REQUIRED.--A national association may apply to the Comptroller, on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

"(b) REGULATION.--A national wholesale financial institution may exercise, in accordance with its articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national banking association formed in accordance with section 5133 of the Revised Statutes of the United States and shall be subject, in accordance with regulations issued by the Comptroller, to provisions of Title LXII of the Revised Statutes otherwise applicable to a national banking association that is not a national wholesale financial institution.".

(c) STATE MEMBER WHOLESALE FINANCIAL INSTITUTIONS AUTHORIZED.--The Federal Reserve Act (12 U.S.C. 221 *et seq*.) is amended by inserting after section 9A the following new section:

"SEC. 9B. STATE MEMBER WHOLESALE FINANCIAL INSTITUTIONS.

"(a) BOARD APPROVAL REQUIRED.--

"(1) APPLICATION.--

"(A) IN GENERAL.--Any bank may apply to the Board, on such forms and in accordance with such regulations as the Board may prescribe, for permission to--

"(i) operate as a state member wholesale financial institution; and

"(ii) subscribe to the stock of the Federal Reserve bank organized within the district where the applying organization will be located as a state member wholesale financial institution.

"(B) TREATMENT AS A STATE MEMBER BANK APPLICATION.-- Any application under subparagraph (A) to subscribe to the stock of a Federal Reserve bank shall be treated as an application under, and shall be subject to the provisions of section 9.".

(d) REQUIREMENTS APPLICABLE.--

(1) INSURANCE TERMINATION.--No insured depository institution may become a wholesale financial institution unless it has met all requirements under the Federal Deposit Insurance Act for voluntary termination of deposit insurance.

(2) APPLICATION FEE.--No bank may become a wholesale financial institution unless the Board or the Comptroller has received from the bank full payment of such fee as the Board or the Comptroller shall impose for applications to become a state member wholesale financial institution or a national wholesale financial institution, respectively.

(e) EXISTING LAWS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.--

(1) FEDERAL RESERVE ACT.--Except as otherwise provided in this section, wholesale financial institutions shall be subject to the provisions of the Federal Reserve Act that apply to member banks to the same extent and in the same manner as such provisions apply to national banks (in the case of national wholesale financial institutions) and to state member banks (in the case of state member wholesale financial institutions), except that a wholesale financial institution may terminate membership under the Federal Reserve Act only as part of procedures, prescribed by the Board, under which such institution terminates its status as a wholesale financial institution.

(2) PROMPT CORRECTIVE ACTION.--Section 38 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the same manner and to the same extent that it applies to an insured depository institution, and any reference in such section to an insured depository institution shall also be deemed to be a reference to a wholesale financial institution, except that--

(A) in the case of wholesale financial institutions, the purpose of prompt corrective action shall be to protect taxpayers and the financial system from risks associated with access to the payments system and availability of discounts, advances, and other extensions of credit from a Federal Reserve bank;

(B) the capital levels and relevant capital measures for each capital category specified in section 38 of the Federal Deposit Insurance Act shall

be set jointly by the Board and the Comptroller in accordance with subsection (g)(3);

(C) section 38(g) of the Federal Deposit Insurance Act shall not apply to wholesale financial institutions; and

(D) for purposes of applying section 38 of the Federal Deposit Insurance Act to wholesale financial institutions, all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board in the case of a state member wholesale financial institution and the Comptroller in the case of a national wholesale financial institution.

(3) ENFORCEMENT AUTHORITY.--Subsection (k) of section 7, subsections (b) through (n), (s), (u), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the same manner and to the same extent as they apply to state member banks and national banks, and any reference in such provisions to an insured depository institution shall also be deemed to be a reference to a wholesale financial institution.

(4) CHANGE IN BANK CONTROL ACT.--Section 7(j) of the Federal Deposit Insurance Act shall apply to wholesale financial institutions in the same manner and to the same extent as to insured depository institutions and all references in that subsection to insured depository institutions shall also be deemed references to wholesale financial institutions.

(5) INTERNATIONAL LENDING SUPERVISION ACT.--The Comptroller and the Board shall apply provisions of the International Lending Supervision Act (12 U.S.C. 3901 et seq.) to wholesale financial institutions in the same manner as those provisions apply to national banks and state member banks that are not wholesale financial institutions, except that section 908 of that Act shall not apply to wholesale financial institutions.

(6) BANK MERGER ACT.--State member wholesale financial institutions and national wholesale financial institutions shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such institutions were state member banks in the case of a state member wholesale financial institution, or national banks in the case of a national wholesale financial institution.

(f) SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.--

(1) LIMITATIONS ON DEPOSITS.--Pursuant to joint regulations issued by the Board and the Comptroller, no wholesale financial institution shall receive or maintain deposits of $100,000 or less.

(2) NO DEPOSIT INSURANCE.--No deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

(3) ADVERTISING AND DISCLOSURE.--The Board and the Comptroller shall prescribe joint regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is notified that deposits at the

wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government and that the wholesale financial institution is authorized to engage only in wholesale, and not retail, deposit activities.

(4) SECTION 122 OF THIS ACT.--

(A) IN GENERAL.--Section 122 of this Act shall apply with respect to a wholesale financial institution in the same manner and to the same extent as if the wholesale financial institution were an insured depository institution. The Board and the Comptroller shall jointly prescribe regulations to carry out this subparagraph.

(B) EXEMPTIONS.--The Board or the Comptroller may, by order, exempt a state member wholesale financial institution or national wholesale financial institution, respectively, from section 122 upon determining that the institution does not sell investment products to customers that need the protections of that section.

(g) SPECIAL CAPITAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.--

(1) MINIMUM CAPITAL LEVELS.--

(A) IN GENERAL.--The Board and the Comptroller shall, by joint regulation, adopt capital requirements for wholesale financial institutions that--

(i) account for the status of wholesale financial institutions as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act;

(ii) protect taxpayers and the financial system from risks associated with access to the payments system and availability of discounts, advances, or other extensions of credit from a Federal Reserve bank; and

(iii) shall not be less than the levels required for an insured depository institution to be well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).

(B) LEVERAGE LIMIT.--The minimum ratio of tangible equity to total assets of a wholesale financial institution shall not be less than the levels of capital required for a state member bank to be well capitalized in the case of a state member wholesale financial institution, or for a national bank to be well capitalized in the case of a national wholesale financial institution.

(2) SUBORDINATED DEBT REQUIREMENT.--The Board and the Comptroller may, by joint regulation--

(A) require wholesale financial institutions to issue subordinated debt; and

(B) prescribe the terms and use of such subordinated debt.

(3) CAPITAL CATEGORIES FOR PROMPT CORRECTIVE ACTION SECTION 10B(b) OF THE FEDERAL RESERVE ACT.--For purposes of applying section 38 of Federal Deposit Insurance Act and section 10B(b) of the Federal Reserve Act, the Board and the Comptroller shall, by joint regulation, establish, for each relevant capital measure specified under those provisions, the levels at which a wholesale financial institution is adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.

(h) ADDITIONAL PROTECTIONS.--

(1) BOARD AUTHORITY TO PROTECT PAYMENTS SYSTEM.--In addition to any requirements otherwise applicable to member banks or otherwise applicable under this section, the Board may prescribe, by rule or order, for wholesale financial institutions--

(A) credit limits that take into account the financial condition of an affiliate (as defined in section 2 of the Bank Holding Company Act of 1956) of a wholesale financial institution; and

(B) special clearing balance requirements.

(2) AUTHORITY TO IMPOSE ADDITIONAL RESTRICTIONS.--The Board and the Comptroller may impose, by joint regulation, any additional requirements on wholesale financial institutions that are determined to be appropriate or necessary to protect taxpayers and the financial system from risks associated with access to

the payments system and availability of discounts, advances, and other extensions of credit from a Federal Reserve bank.

(3) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.--The Board and the Comptroller may, by joint regulation, exempt wholesale financial institutions from any provision of law otherwise applicable to national banks and state member banks, other than provisions of this subtitle, if such exemption is consistent with the--

(A) protection of taxpayers and the financial system from risks associated with access to the payments system and availability of discounts, advances, and other extensions of credit from a Federal Reserve bank; and

(B) protection of the Federal deposit insurance funds from any indirect effect of such exemption.

(4) LIMITATIONS ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.--For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured depository institution shall not be a bank.

(5) NO EFFECT ON OTHER PROVISIONS.--This section shall not be construed to limit the Board's authority over member banks under any other provision of law, or to create any obligation for any Federal Reserve bank to make, increase, renew, or extend any advances or discount under this Act to any member bank or other depository institution.

(i) RESOLUTION OF WHOLESALE FINANCIAL INSTITUTIONS.--

(1) CONSERVATORSHIP OR RECEIVERSHIP.--

(A) The Comptroller may appoint a conservator or receiver for a national wholesale financial institution to the same extent and in the same manner as the Comptroller may appoint a conservator or receiver for a national bank, and the conservator or receiver shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

(B) The Board may appoint a conservator or receiver for a state member wholesale financial institution in the same manner and to the same extent as the Comptroller may appoint a conservator or receiver for a national wholesale financial institution, and the conservator or receiver shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national wholesale financial institution.

(2) BANKRUPTCY PROCEEDING.--Upon the filing of a petition by the conservator or receiver pursuant to the direction of the Comptroller or the Board, title 11, United States Code, shall apply to--

(A) a national wholesale financial institution in lieu of sections 5220, 5221, 5234, 5235, and 5236 of the Revised Statutes of the United States, the Bank Conservation Act, the second undesignated paragraph of section 6

of the Federal Reserve Act, and the 2nd section of the Act entitled "An Act authorizing the appointment of receivers of national banking associations, and for other purposes." and approved June 30, 1876; and

(B) a state member wholesale financial institution in lieu of State law.

(j) EXCLUSIVE JURISDICTION.--Subsections (c) through (e) of section 43 of the Federal Deposit Insurance Act shall not apply to wholesale financial institutions.

(k) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.--Section 10B of the Federal Reserve Act (12 U.S.C. 347(b)) is amended by adding at the end the following new subsection:

"(c) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.--

"(1) IN GENERAL.--The Board shall submit a report to Congress at the end of any year in which any wholesale financial institution has obtained a discount, advance, or other extension of credit from a Federal Reserve bank.

"(2) CONTENTS.--Any report submitted under paragraph (1) shall explain the circumstances and need for any discount, advance, or other extension of credit to a wholesale financial institution during the period covered by the report, including the type and the amount of credit extended and the amount of credit remaining outstanding as of the date of the report.".

(l) APPLICABILITY OF THE COMMUNITY REINVESTMENT ACT OF 1977.--For purposes of section 803(2), section 804, and section 807(1) of the Community Reinvestment Act of

1977 (12 U.S.C. 2902(2), 2903, and 2905(1)), a wholesale financial institution shall be treated as a “regulated financial institution,” a “financial institution” or an “insured depository institution”, respectively, and such sections shall apply to wholesale financial institutions in the same manner and to the same extent as to institutions that are insured depository institutions.

(m) CONSULTATION WITH SECURITIES AND EXCHANGE COMMISSION.--The Board or the Comptroller shall notify, and to the extent practicable consult with, the Securities and Exchange Commission prior to causing any state member wholesale financial institution or national wholesale financial institution (or any affiliate thereof), respectively, to liquidate a securities position that may have significant market impact.

(n) CONFORMING AMENDMENTS TO THE FEDERAL RESERVE ACT.

(1) Section 19(b)(1)(A)(i) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended by inserting ", or any wholesale financial institution as defined in section 171 of the Financial Services Competition Act of 1997" after "such Act".

(2) The first undesignated paragraph of section 2 of the Federal Reserve Act (12 U.S.C. 222) is amended by striking “and shall thereupon be an insured bank under the Federal Deposit Insurance Act.”.

(o) AMENDMENT TO THE BANK HOLDING COMPANY ACT.--Section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(c)) is amended **[ALTERNATIVE A:** ***by striking subparagraph (B) and inserting the following:***

***"(B) a wholesale financial institution as defined in section 171 of the Financial Services Competition Act of 1997."*.] OR [ALTERNATIVE B: by adding at the end the following new subparagraph:**

"(J) a wholesale financial institution as defined in section 171 of the Financial Services Competition Act of 1997."].

SEC. 172. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) VOLUNTARY TERMINATION OF INSURED STATUS BY CERTAIN INSTITUTIONS.--Section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is amended--

(1) by striking paragraph (1); and

(2) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively.

(b) VOLUNTARY TERMINATION OF INSURED STATUS.--The Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq*.) is amended by inserting after section 8 the following new section:

"SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.

"(a) IN GENERAL.--An insured State bank or a national bank may voluntarily terminate its status as an insured depository institution in accordance with regulations of the Corporation if--

"(1) such institution provides written notice of its intent to terminate its insured status--

"(A) to the Corporation, not less than 6 months before the effective date of such termination; and

"(B) to all the depositors of such bank, not less than 6 months before the effective date of the termination of such status; and

"(2) either--

"(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as set forth in section 7(b)(2)(A)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)(iv)) as of the date the bank provides a written notice of its intent to terminate its insured status and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the two semiannual assessment periods immediately following such date; or

"(B) the Corporation approves the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (c).

"(b) ELIGIBILITY FOR INSURANCE TERMINATED.--A depository institution that voluntarily elects to terminate its insured status under subsection (a) shall not receive insurance of any of its deposits or any other assistance authorized under this Act after the period specified in subsection (d)(1).

"(c) EXIT FEES.--

"(1) IN GENERAL.--Any bank that voluntarily terminates its status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of contingent and other liabilities of the relevant deposit insurance fund.

"(2) PROCEDURES.--The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

"(d) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.--

"(1) TRANSITION PERIOD.--The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the institution's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, additions to any such deposits, and any new deposits in the depository institution made after the effective date of the voluntary termination of insured status, shall not be insured by the Corporation.

"(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.--During the period specified in paragraph (1), a bank shall continue to pay assessments required under section 7 as if it were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution during such period as under this Act, and in the event that the depository institution is closed due to an inability to

meet the demands of its depositors during such period, the Corporation shall have the same powers and rights with respect to such depository institution as in the case of an insured depository institution.

“(e) ADVERTISEMENTS.--

“(1) IN GENERAL.--A depository institution that voluntarily terminates its insured status under this section shall not advertise or hold itself out as having insured deposits, except that it may advertise the temporary insurance of deposits under subsection (d) if, in connection with any such advertisement, it shall also state with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

"(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.--Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of its insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

"(g) NOTICE REQUIREMENTS.--

"(1) NOTICE TO THE CORPORATION.--The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

"(2) NOTICE TO DEPOSITORS.--The notice to depositors of an institution's intent to terminate its insured status required under subsection (a)(1)(B) shall be--

"(A) sent to each depositor's last address of record with the institution; and

"(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.".

(c) Section 3(q) of the Federal Deposit Insurance Act is amended--

(1) in paragraph (1) by inserting ", or any uninsured national banking association that is a wholesale financial institution (as defined in section 171 of the Financial Services Competition Act of 1997)" after "foreign bank"; and

(2) in paragraph (2) by inserting the following new subparagraph (B) and redesignating the remaining subparagraphs accordingly:

"(B) any State member bank that is a wholesale financial institution (as defined in section 171 of the Financial Services Competition Act of 1997);".

SEC. 173. AMENDMENTS TO TITLE 11, UNITED STATES CODE.

(a) DEFINITION OF WHOLESALE FINANCIAL INSTITUTION.--Section 101 of title 11, United States Code (11 U.S.C. 101), is amended by inserting after paragraph 55 the following:

"(55A) 'wholesale financial institution' means a national wholesale financial institution or a state member wholesale financial institution as defined in section 9B of the Federal Reserve Act.".

(b) DEFINITION OF FEDERAL MUTUAL BANK HOLDING COMPANY.--Section 101 of title 11, United States Code (11 U.S.C. 101), is amended by inserting after paragraph 21B the following:

"(21B) 'Federal mutual bank holding company' has the same meaning as in section 5133B(h)(1) of the Revised Statutes of the United States.".

(c) COMPTROLLER OR BOARD MAY PERMIT WHOLESALE FINANCIAL INSTITUTION TO BE A DEBTOR.--Section 109(b) of title ll, United States Code (11 U.S.C. 109(b)), is amended in paragraph (2) by inserting "(other than a wholesale financial institution as provided in section 303(b)(5))" after "bank".

(d) CONSERVATOR OR RECEIVER MAY PETITION.--Section 303(b) of title 11, United States Code (11 U.S.C. 303(b)), is amended--

(1) in paragraph (3)(B) by striking "or" at the end;

(2) in paragraph (4) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(5) in a proceeding concerning a wholesale financial institution, exclusively by the conservator or receiver appointed by the Comptroller of the Currency or the Board of Governors of the Federal Reserve System; or

"(6) in a proceeding concerning a Federal mutual bank holding company, the Comptroller of the Currency.".

(e) EFFECT OF INVOLUNTARY PETITION BY COMPTROLLER OR FEDERAL RESERVE BOARD.--

(1) EXEMPTION FROM INDEMNIFICATION.--Section 303(e) of title 11, United States Code (11 U.S.C. 303(e)), is amended by inserting ", other than a petitioner specified in subsection (b)(5) or subsection (b)(6)," after "petitioner under this section".

(2) RESTRICTION ON OPERATION PENDING COURT ORDER OF RELIEF.--Section 303(f) of title ll, United States Code (11 U.S.C. 303(f)), is amended by inserting "or a petition was filed by a petitioner specified in subsection (b)(5) or subsection (b)(6)" after "otherwise".

(3) INTERIM TRUSTEE TO BE APPOINTED.--Section 303(g) of title 11, United States Code (11 U.S.C. 303(g)), is amended by striking the period at the end of the first sentence and inserting ". Upon the filing of a petition by a petitioner specified in subsection (b)(5) or subsection (b)(6), and without requiring notice or hearing, the United States Trustee shall appoint an interim trustee from a list submitted by the Comptroller of the Currency or the Board of Governors of the Federal Reserve System of 5 disinterested persons that are qualified and willing to serve.".

(f) TRUSTEE TO BE APPOINTED.--

(1) CHAPTER 7 PROCEEDING.--Section 702 of title 11, United States Code (11 U.S.C. 702), is amended by inserting the following new subsection:

"(e) Notwithstanding any other provision of this section, in a case involving a wholesale financial institution the Comptroller of the Currency or the Board of Governors of the Federal Reserve System shall submit a list of 5 disinterested persons that are qualified and willing to serve as trustee in the case. The United States Trustee shall appoint one of such persons to serve as trustee in the case.".

(2) CHAPTER 11 PROCEEDING.--Section 1104 of title 11, United States Code (11 U.S.C. 1104), is amended by inserting the following new subsection:

"(e) Notwithstanding any other provision of this section, if a wholesale financial institution is a debtor the Comptroller of the Currency or the Board of Governors of the Federal Reserve System shall submit a list of 5 disinterested persons that are qualified and willing to serve as trustee in the case. The United States Trustee shall appoint one of such persons to serve as trustee in the case, or a successor trustee upon the original trustee's death, resignation, or removal under section 324, or the trustee's failure to qualify under section 322.".

(g) EXPANDED GROUNDS FOR INVOLUNTARY PETITION BY BANK REGULATORY AGENCY.--Section 303(h) of title ll, United States Code (11 U.S.C. 303(h)), is amended--

(1) in paragraph (1) by striking "or" at the end;

(2) in paragraph (2) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(3) A wholesale financial institution is in conservatorship or receivership.".

(h) CONVERSION TO CHAPTER 11 RESTRICTED.--Section 706(d) of title 11, United States Code (11 U.S.C. 706(d)), is amended to read as follows:

"(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title if--

"(1) the debtor may not be a debtor under such chapter;

"(2) a petition was filed by a petitioner specified in subsection (b)(5), unless the conservator or receiver has consented in writing; or

"(3) a petition was filed by a petitioner specified in subsection (b)(6).".

Subtitle H--Streamlining Antitrust Review of Bank Acquisitions and Mergers

SEC. 181. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) AMENDMENTS TO SECTION 3 TO REQUIRE FILING OF APPLICATION COPIES WITH ATTORNEY GENERAL.--Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended--

(1) in subsection (b) by inserting after paragraph (2) the following new paragraph:

"(3) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.--Any applicant seeking prior approval of the Board to engage in an acquisition

transaction under this section must file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Board."; and

(2) in subsection (c)--

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(b) AMENDMENTS TO SECTION 11 TO MODIFY JUSTICE DEPARTMENT NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.--Section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) is amended--

(1) in subsection (b)(1)--

(A) by striking ", if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors,";

(B) by striking "as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval." and inserting in lieu thereof "as may be prescribed by the Attorney General."; and

(C) by striking "In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act"; and

(2) by striking subsections (c) and (e) and redesignating subsections (d) and (f) as subsections (c) and (d), respectively.

SEC. 182. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT TO VEST IN THE DEPARTMENT OF JUSTICE SOLE RESPONSIBILITY FOR ANTITRUST REVIEW OF DEPOSITORY INSTITUTION MERGERS.

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended--

(a) in paragraph (3)(C) by striking “during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection”;

(b) by amending paragraph (4) to read as follows:

“(4) In determining whether to approve a transaction, the responsible agency shall in every case take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.”;

(c) by amending paragraph (5) to read as follows:

“(5) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the responsible agency has found that it must act immediately in order to prevent the probable failure of one of the banks involved, the transaction may be consummated immediately upon approval by the agency. If the responsible agency has notified the other Federal banking agencies referred to in this section of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval of the responsible agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency, or such shorter period of time as may be prescribed by the Attorney General.”;

(d) by striking paragraph (6) and redesignating paragraphs (7) through (11) as paragraphs (6) through (10), respectively;

(e) in paragraph (6) (as redesignated) by--

(1) amending subparagraph (A)--

(i) by striking "(6)" and inserting "(5)";

(ii) by striking "(5)" and inserting "(4)"; and

(iii) by striking "In any such action, the court shall review de novo the issues presented.";

(2) striking subparagraphs (B) and (D); and

(3) redesignating subparagraph (C) as subparagraph (B);

(f) in paragraph (8) (as redesignated) by inserting "and" after the semicolon at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B); and

(g) by inserting after paragraph (10) (as redesignated) the following new paragraph:

"(11) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.--Any applicant seeking prior written approval of the responsible Federal banking agency to engage in a merger transaction under this subsection shall file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Federal banking agency."

[ADD FOR ALTERNATIVE B: SEC. 182A. AMENDMENTS TO THE HOME OWNERS' LOAN ACT.

Section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)) is amended--

(a) by inserting after paragraph (1) the following new paragraph:

"(2) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.-- Any applicant seeking prior approval of the Director to engage in an acquisition transaction under this section must file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Director."; and

(b) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively;

(c) in paragraph (3), as redesignated,--

(1) by striking "Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Director shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved.";

(2) by striking "(4)(A)" and inserting "(5)(A)";

(3) by striking subparagraphs (A) and (B); and

(4) by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively.]

SEC. 183. INFORMATION FILED BY DEPOSITORY INSTITUTIONS; INTERAGENCY DATA SHARING.

(a) Notice of any proposed transaction for which approval is required shall be in a format designated and required by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) and shall contain a section on the likely competitive effects of the proposed transaction. The appropriate Federal banking agency, with the concurrence of the Attorney General, shall designate and require the form and content of the competitive effects section. Upon notification by the Attorney General that the competitive effects section of an application is incomplete, the appropriate Federal banking agency shall notify the applicant that the agency will suspend processing of the application until the Attorney General notifies the agency that the application is complete. This provision shall not affect the appropriate Federal banking agency's authority to act immediately to prevent the probable failure of one the banks involved or reduce or eliminate a post approval waiting period in case of an emergency requiring expeditious action. With the concurrence of the Attorney General, the appropriate Federal banking agency may exempt from the requirement that applicants file a competitive effects section, classes of persons, acquisitions, or transactions that are not likely to violate the antitrust laws.

(b) INTERAGENCY DATA SHARING REQUIREMENT.--To the extent not prohibited by other law, the Federal banking agencies shall make available to the Attorney General any data in their possession that the Attorney General deems necessary for antitrust reviews

of transactions requiring approval under section 3 of the Bank Holding Company Act of 1956 or section 18(c) of the Federal Deposit Insurance Act.

SEC. 184. EFFECTIVE DATE.

This subtitle shall become effective 6 months after the date of enactment of this Act.

Subtitle I--Redomestication of Mutual Life Insurers

SEC. 191. REDOMESTICATION OF MUTUAL LIFE INSURERS.

(a) REDOMESTICATION.--A mutual life insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile, the mutual life insurer becomes a stock life insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise).

(b) RESULTING DOMICILE.--Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual life insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) LICENSES PRESERVED.--The certificate of authority, agents' appointments and licenses, rates, approvals, and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) EFFECTIVENESS OF OUTSTANDING POLICIES AND CONTRACTS.--

(1) IN GENERAL.--All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be

endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) FORMS.--

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) NOTICE.--A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual life insurer with the insurance regulator of each such licensed State.

SEC. 192. EFFECT ON STATE LAWS RESTRICTING REDOMESTICATION.

(a) IN GENERAL.--Unless otherwise permitted by this subtitle, State laws that conflict with the purposes and intent of this subtitle are preempted, including but not limited to--

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer

or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate or has redomesticated pursuant to this subtitle;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person or entity has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate or has redomesticated pursuant to this subtitle; and

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual life insurer pursuant to this subtitle, any certificate of authority, agent appointment or license, rate approval or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) DIFFERENTIAL TREATMENT PROHIBITED.--No State law, regulation, interpretation, or functional equivalent thereof, may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) LAWS PROHIBITING OPERATIONS.--If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer immediately following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of

authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to--

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed state in which the redomesticated insurer is doing business to determine the insurer's financial condition, if--

(A) the State insurance regulator of the transferee domicile has not begun and has refused to initiate an examination of the redomesticated insurer; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in--

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in subsection (d);

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

(d) JUDICIAL REVIEW.--The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section involving any redomesticating or redomesticated insurer.

(e) SEVERABILITY.--If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 193. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(a) COURT OF COMPETENT JURISDICTION.--The term "court of competent jurisdiction" means a court authorized pursuant to section 192(d) to adjudicate litigation arising under this subtitle.

(b) DOMICILE.--The term "domicile" means the State in which an insurer is incorporated, chartered, or organized.

(c) INSURANCE LICENSEE.--The term "insurance licensee" means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(d) INSTITUTION.--The term "institution" means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(e) LICENSED STATE.--The term "licensed State" means any State, Puerto Rico, or the U.S. Virgin Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(f) MUTUAL LIFE INSURER.--The term "mutual life insurer" means a mutual life insurer organized under the laws of any State.

(g) PERSON.--The term "person" means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(h) REDOMESTICATED INSURER.--The term "redomesticated insurer" means a mutual life insurer that has redomesticated pursuant to this subtitle.

(i) REDOMESTICATING INSURER.--The term "redomesticating insurer" means a mutual life insurer that is redomesticating pursuant to this subtitle.

(j) REDOMESTICATION OR TRANSFER.--The terms "redomestication" and "transfer" mean the transfer of the domicile of a mutual life insurer from one State to another State pursuant to this subtitle.

(k) STATE INSURANCE REGULATOR.--The term "State insurance regulator" means the principal insurance regulatory authority of a State or of Puerto Rico or the U.S. Virgin Islands.

(l) STATE LAW.--The term "State law" means the statutes of any State or of Puerto Rico or the U.S. Virgin Islands, and any regulation, order, or requirement prescribed pursuant to any such statute.

(m) TRANSFEREE DOMICILE.--The term "transferee domicile" means the State to which a mutual life insurer is redomesticating pursuant to this subtitle.

(n) TRANSFEROR DOMICILE.--The term "transferor domicile" means the State from which a mutual life insurer is redomesticating pursuant to this subtitle.

SEC. 194. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

Subtitle J--Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions

SEC. 195. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS.

The purpose of this subtitle is to apply the reforms of this Act to foreign banks and other foreign financial institutions in a manner consistent with the principles of national treatment and equality of competitive opportunity, without disadvantaging either foreign or domestic banks or other financial institutions in relation to each other.

SEC. 196. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS THAT ARE QUALIFYING BANK HOLDING COMPANIES.

(a) EFFECT ON GRANDFATHER RIGHTS UNDER THE INTERNATIONAL BANKING ACT OF 1978.--Section 8(c) of the International Banking Act is amended by adding at the end the following new paragraph:

"(3) TERMINATION OF GRANDFATHERED RIGHTS.--

"(A) IN GENERAL.--If any foreign bank or foreign company files with the Board a declaration under section 6(a)(1)(A)(v) of the Bank Holding Company Act of 1956--

"(i) any authority conferred by this subsection on any foreign bank or company to engage in any activity not permissible for a national bank to engage in directly shall terminate immediately; and

"(ii) section 6(a) of the Bank Holding Company Act of 1956 shall apply to such foreign bank or company in the same manner and to the same extent as it applies to domestic qualifying bank holding companies.

"(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.--If a foreign bank or company that engages directly or through an affiliate pursuant to paragraph (1) in an activity that is not permissible for a national bank to engage in directly has not filed a declaration with the Board of its status as a qualifying bank holding company under section 6(a) of the Bank Holding Company Act of 1956 by the end of the second year after the date of enactment of the Financial Services Competition Act of 1997, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a qualifying bank holding company

organized under the laws of the United States, including a requirement to conduct such activities in compliance with the safeguards of section 6 of the Bank Holding Company Act of 1956 and any additional safeguards imposed by the National Council on Financial Services.".

(b) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.--The Bank Holding Company Act of 1956 is amended--

(1) by adding at the end of section 6 (as added by section 103 of this Act) the following new subsections:

"(h) CAPITAL STANDARDS FOR QUALIFYING BANK HOLDING COMPANIES THAT ARE FOREIGN BANKS.--The Board shall establish and apply capital standards comparable to those applied to insured depository institutions, for the acquisition, retention, and operation of an affiliate in the United States engaged in activities not permissible for a national bank to engage in directly, by a foreign bank that operates a branch or agency or controls a commercial lending company in the United States, giving due regard to the principles of national treatment and equality of competitive opportunity. The Board may take into account any support provided by a company that owns or controls such a foreign bank.

"(i) 'FINANCIAL IN NATURE' RULE FOR FOREIGN FINANCIAL INSTITUTIONS.--With respect to foreign financial institutions, the term 'financial in nature' in subsection (a)(2) means **[ALTERNATIVE A:** ***that such institution is directly engaged in financial activities outside the United States, and either--***

"(1) derives not less than ___ percent of its gross revenues in the United States from sources described in that paragraph; or

"(2) derives all of its business that is not financial from companies that meet the standard for investment by a foreign bank holding company under section 2(h)(2). **] OR [ALTERNATIVE B: <u>that such institution is directly engaged in financial activities outside the United States and derives all of its gross revenues in the United States from activities described in that paragraph, other than activities that are permitted under section 2(h)(2) of this Act.</u>]**

"(j) DEFINITIONS.--For purposes of this section, the following definitions shall apply:

"(1) FOREIGN FINANCIAL INSTITUTION.--The term 'foreign financial institution' means a financial institution organized under the laws of a foreign country.

"(2) FOREIGN BANK.--The term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.

"(3) FOREIGN COUNTRY.--The term 'foreign country' has the same meaning as in section 1(b)(8) of the International Banking Act of 1978.

"(4) BRANCH.--The term 'branch' has the same meaning as in section 1(b)(3) of the International Banking Act of 1978.

"(5) AGENCY.--The term 'agency' has the same meaning as in section 1(b)(1) of the International Banking Act of 1978.

"(6) COMMERCIAL LENDING COMPANY.--The term 'commercial lending company' has the same meaning as in section 1(b)(9) of the International Banking Act of 1978.

"(k) RESTRICTION ON CERTAIN ACTIVITIES AND AFFILIATIONS.--

"(1) Notwithstanding subsection (b), a qualifying bank holding company that is a foreign bank may not engage directly in the United States in any activity that is not permissible for a national bank to engage in directly in the United States.

[ADD FOR ALTERNATIVE A: ***"(2) A bank holding company that is a foreign bank may not become affiliated with any company (other than a section 2(h)(2) company) that--***

"(A) is not deemed to be engaged in activities that are financial in nature as defined in subsection (a)(2); and

"(B) has consolidated assets of more than $750 million.

No company that is, or is affiliated with, such a company (other than a foreign bank affiliated with a section 2(h)(2) company) may become a bank holding company.**]**

"(l) FEDERAL RESERVE ACT RESTRICTIONS ON QUALIFYING BANK HOLDING COMPANIES THAT ARE FOREIGN BANKS.--Sections 23A and 23B of the Federal Reserve

Act shall apply to transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and an affiliate of the foreign bank engaged in any activity in the United States (other than an affiliate permitted under section 2(h)(2)) that is not permissible for a national bank to engage in directly as if the foreign bank were a member bank.

[ADD FOR ALTERNATIVE A: ***"(m) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.--A subsidiary insured depository institution of a bank holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate (other than an affiliate permitted under section 2(h)(2)) unless the affiliate is engaged in activities that are financial in nature (as defined in subsection (a)(2)).";*** and

(2) by striking the first sentence in section 2(h)(2) and inserting the following: "A bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States may acquire shares of any company organized under the laws of a foreign country (or shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States.".

SEC. 197. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.

(a) AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.--The International Banking Act of 1978 (31 U.S.C. 3101 *et seq*.) is amended--

(1) by adding at the end the following new section:

"**SEC. 18. WHOLESALE FINANCIAL INSTITUTIONS.**--

"(a) FOREIGN WHOLESALE FINANCIAL INSTITUTIONS AUTHORIZED.--

"(1) A foreign bank that has no insured depository institutions in the United States may apply to the Board to be deemed a wholesale financial institution (as that term is defined in section 171 of the Financial Services Competition Act of 1997) even if it does not operate a national wholesale financial institution under section 5136C of Chapter 1 of Title LXII of the Revised Statutes of the United States (12 U.S.C. 21 *et seq*.) or operate a state entity that applies to be a state member wholesale financial institution under section 9B of the Federal Reserve Act (12 U.S.C. 221 *et seq*.). The branches of such a foreign bank shall be subject to the Financial Services Competition Act of 1997 only to the extent and in the manner specified in this section.

"(2) No foreign bank may be deemed a wholesale financial institution unless the Board has approved its application under section 7(d).

"(b) EXISTING LAWS APPLICABLE.--Except as otherwise provided in section 8, the approval by the Board of an application by a foreign bank operating in the United States to be deemed a wholesale financial institution shall not affect the applicability to that foreign bank (including its branches, agencies, commercial lending corporations, and affiliates) of any law in effect as of the date of enactment of the Financial Services Competition Act of 1997.

"(c) CAPITAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS THAT ARE FOREIGN BANKS.--The Board shall establish and apply capital standards for foreign banks whose applications to be deemed wholesale financial institutions have been approved under section 7(d). Such standards shall be comparable to the standards established for wholesale financial institutions organized under State or Federal law, giving due regard to the principle of national treatment and equality of competitive opportunity.

"(d) FEDERAL RESERVE ACT RESTRICTIONS ON FOREIGN BANKS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.--Sections 23A and 23B of the Federal Reserve Act shall apply to transactions between a branch, agency, or commercial lending company of a foreign bank in the United States that has been deemed to be a wholesale financial institution and an affiliate of such foreign bank engaged in any activity in the United States (other than an affiliate permitted under section 2(h)(2) of the Bank Holding

Company Act of 1956) that is not permissible for a national bank to engage in directly as if the foreign bank were a member bank.

"(e) APPLICABILITY OF OTHER LAWS.-- Paragraphs (2), (3), (4), and (6) of section 171(e) of the Financial Services Competition Act of 1997 shall apply to the branches in the United States of a foreign bank whose application to be deemed a wholesale financial institution has been approved under section 7(d) in the manner prescribed in joint regulations issued by the appropriate Federal banking agencies.";

(2) in section 7(d)(1) (12 U.S.C. 3105(d)(1)), by inserting after "agency," the following: "be deemed a wholesale financial institution for purposes of the Financial Services Competition Act of 1997,"; and

(3) in section 8(a) (12 U.S.C. 3106(a)), by striking the period and adding after "provisions" the following: ", except that any such foreign bank or company that the Board has deemed to be a wholesale financial institution under section 7(d), and any affiliate of such wholesale financial institution, shall not be subject to the Bank Holding Company Act of 1956.".

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.--Section 8A of the Federal Deposit Insurance Act (as added by section 172 of this Act) is amended by adding at the end the following new subsection:

"(h) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.--The provisions on voluntary termination of insurance in this section apply to an insured branch of a foreign

bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.".

(c) COMMUNITY REINVESTMENT ACT OF 1977 APPLICABLE.--For purposes of section 171(l) of the Financial Services Competition Act of 1997, the term "wholesale financial institution" means the branches in the United States of a foreign bank whose application to be deemed a wholesale financial institution has been approved by the Board under section 7(d) of the International Banking Act of 1978. The Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation shall, by joint regulation, apply sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks that receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent as such sections apply to such a corporation.

(d) AUTHORITY TO IMPOSE ADDITIONAL RESTRICTIONS AND REQUIREMENTS.--Section 7(d)(5) of the International Banking Act of 1978 is amended by--

(1) inserting before "Consistent" the following subparagraph designation and heading: "(A) CONDITIONS TO ENSURE APPROPRIATE SUPERVISION OF FOREIGN BANKS.";

(2) adding at the end the following new subparagraph:

"(B) ADDITIONAL RESTRICTIONS AND REQUIREMENTS.--The Board and the Comptroller of the Currency may impose, by joint regulation, any

additional requirements on foreign banks that the Board deems to be wholesale financial institutions that are determined to be appropriate or necessary to protect taxpayers and the financial system from risks associated with access to the payments system and availability of discounts, advances, and other extensions of credit from a Federal Reserve bank, giving due regard to the principles of national treatment and equality of competitive opportunity.”.

[ADD FOR ALTERNATIVE B: Subtitle K--Amendments to Reflect Changes in The Financial Activities Permissible for Banks and Bank Holding Companies

SEC. 198. AMENDMENTS TO REFLECT CHANGES IN THE FINANCIAL ACTIVITIES PERMISSIBLE FOR BANKS AND BANK HOLDING COMPANIES.

(a) AMENDMENT TO THE DATE OF THE INSURANCE FUND MERGER.--Section 2704(c) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 is amended to read as follows:

"(c) EFFECTIVE DATE.--This section and the amendments made by this section shall become effective on January 1, 1999."

(b) PROHIBITION ON MERGER OR CONSOLIDATION OF OCC AND OTS REPEALED.--Section 321(e) of title 31, United States Code (31 U.S.C. 321(e)) is repealed.

SEC. 199. PERMISSIBLE ACTIVITIES OF SAVINGS AND LOAN HOLDING COMPANIES.

Section 10(c)(2)(F)(i) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(2)(F)(i)) is amended by inserting "(as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997)" after "the Bank Holding Company Act of 1956".]

Subtitle __--Effective Date of Title I

[ALTERNATIVE A: ***Except as otherwise provided in this title, this title shall become effective two years after the date of enactment of this Act.*** **] OR [ALTERNATIVE B: Except as otherwise provided in this title, this title shall become effective 9 months after the date of enactment of this Act.]**